

1 **Part VI**
2 **Remote Sellers, Referrers, and Marketplace Facilitators**
3

4 **Subpart A**
5 **Findings and Intent**

6 NEW SECTION. **Sec. 601.** (1) The legislature finds that states
7 fail to collect more than twenty-three billion dollars annually in
8 sales taxes from remote sales over the internet and through catalogs.
9 The legislature further finds that Washington and its local
10 governments will lose out on an estimated three hundred fifty-three
11 million dollars in sales and use taxes in fiscal year 2018 from
12 remote sales, reducing funds that would otherwise be available for
13 the public education system, health care services, infrastructure,
14 and other vital public services.

15 (2) The legislature finds that Colorado adopted a law requiring
16 out-of-state retailers that do not collect Colorado's sales tax to
17 report tax-related information to their Colorado customers and the
18 Colorado department of revenue. The legislature further finds that in
19 2016 the United States court of appeals for the tenth circuit upheld
20 that law.

21 (3) The legislature intends by this act to address the
22 significant harm and unfairness brought about by the physical
23 presence nexus rule. To achieve this objective, this act adopts a new
24 program. Under the new program, remote sellers meeting a specified
25 threshold of gross receipts from retail sales into this state would
26 have the option to either collect retail sales or use tax on taxable
27 retail sales into this state or comply with certain sales and use tax
28 notice and reporting provisions. This option is also available to
29 other persons such as marketplace facilitators for facilitated sales
30 on behalf of third-party remote sellers. The sales and use tax notice
31 and reporting provisions in this act are similar to the multistate
32 tax commission's draft model sales and use tax notice and reporting
33 statute and Colorado's sales and use tax notice and reporting law.

34 **Subpart B**
35 **Sales and Use Tax Collection**

1 NEW SECTION. **Sec. 602.** A new section is added to chapter 82.08
2 RCW to be codified between RCW 82.08.052 and 82.08.054 to read as
3 follows:

4 (1)(a) Beginning January 1, 2018, and for any calendar year
5 thereafter, remote sellers, referrers, and marketplace facilitators
6 meeting the criteria in subsection (2) of this section or that have a
7 physical presence in this state, must elect to either collect and
8 remit retail sales or use tax on all taxable retail sales into this
9 state pursuant to this chapter and chapters 82.12 and 82.32 RCW or
10 comply with section 605 of this act.

11 (b) For marketplace facilitators, the election provided in (a) of
12 this subsection (1) applies only with respect to:

13 (i) Retail sales through the marketplace facilitator's
14 marketplace by or on behalf of marketplace sellers who do not have a
15 physical presence in this state; and

16 (ii) A marketplace facilitator's own retail sales, if the
17 marketplace facilitator does not have a physical presence in this
18 state.

19 (c) For referrers, the election provided in (a) of this
20 subsection (1) applies only with respect to:

21 (i) Retail sales directly resulting from a referral of the
22 purchaser to a marketplace seller who does not have a physical
23 presence in this state; and

24 (ii) A referrer's own retail sales, if the referrer does not have
25 a physical presence in this state.

26 (d) An election under (a) of this subsection (1) to collect
27 retail sales or use tax is binding on the remote seller, referrer, or
28 marketplace facilitator until January 1st of the calendar year that
29 is at least twelve consecutive months after the remote seller,
30 referrer, or marketplace facilitator began collecting retail sales or
31 use tax under such election. A remote seller, referrer, or
32 marketplace facilitator who has made an election under this
33 subsection to collect retail sales or use tax may change its election
34 and comply with section 605 of this act by providing written notice
35 to the department in a form and manner required by the department.
36 Such an election change may take effect only on the first day of the
37 calendar year that is at least thirty days following the date that
38 the department received written notice from the remote seller,
39 referrer, or marketplace facilitator of its change in election.

1 (e)(i) Remote sellers, referrers, and marketplace facilitators
2 complying with section 605 of this act may change their election
3 under this subsection (1) at any time by collecting and remitting
4 retail sales or use taxes under this chapter or chapter 82.12 RCW on
5 taxable retail sales sourced to this state. Such an election is
6 binding as provided in (d) of this subsection (1).

7 (ii) Remote sellers, referrers, and marketplace facilitators
8 electing for the first time to collect retail sales or use tax must
9 begin collecting state and local retail sales or use taxes on taxable
10 retail sales sourced to this state beginning on the first day of the
11 calendar month that is at least thirty days from the date that the
12 remote seller, referrer, or marketplace facilitator met either
13 threshold described in subsection (2) of this section.

14 (f) If the department discovers that any remote seller, referrer,
15 or marketplace facilitator required to make an election under this
16 subsection (1) is not registered with the department and collecting
17 retail sales or use tax, the remote seller, referrer, or marketplace
18 facilitator is conclusively presumed to have elected to comply with
19 the notice and reporting requirements of section 605 of this act.

20 (2)(a) A remote seller or marketplace facilitator is subject to
21 subsection (1) of this section if, during the current or immediately
22 preceding calendar year, the gross receipts of the remote seller or
23 marketplace facilitator from retail sales sourced to this state under
24 RCW 82.32.730 are at least ten thousand dollars.

25 (b) A referrer is subject to subsection (1) of this section if,
26 during the current or immediately preceding calendar year, the gross
27 income of the business received from the referrer's referral services
28 apportioned to Washington under RCW 82.04.462, whether or not subject
29 to tax under chapter 82.04 RCW, and from retail sales sourced to this
30 state under RCW 82.32.730, if any, is at least ten thousand dollars.

31 (3) This section is subject to the provisions of section 613 of
32 this act.

33 (4) For the purposes of this section, "marketplace facilitator,"
34 "referrer," and "remote seller" have the same meaning as provided in
35 section 604 of this act.

36 NEW SECTION. **Sec. 603.** A new section is added to chapter 82.08
37 RCW to be codified between section 602 of this act and RCW 82.08.054
38 to read as follows:

1 (1) For purposes of this chapter and chapter 82.12 RCW, a
2 marketplace facilitator or referrer is deemed to be an agent of any
3 marketplace seller making retail sales through the marketplace
4 facilitator's physical or electronic marketplace or directly
5 resulting from a referral of the purchaser by the referrer.

6 (2) A marketplace facilitator or referrer is relieved of
7 liability under this chapter and chapter 82.12 RCW for failure to
8 collect the correct amount of tax to the extent that the marketplace
9 facilitator or referrer can show to the department's satisfaction
10 that the error was due to incorrect information given to the
11 marketplace facilitator or referrer by the marketplace seller, unless
12 the marketplace facilitator, or referrer, and marketplace seller are
13 affiliated persons. Where the marketplace facilitator or referrer is
14 relieved of liability under this subsection (2), the marketplace
15 seller is solely liable for the amount of uncollected tax due.

16 (3)(a) Subject to the limits in (b) and (c) of this subsection
17 (3), a marketplace facilitator or referrer is relieved of liability
18 under this chapter and chapter 82.12 RCW for the failure to collect
19 tax on taxable retail sales to the extent that the marketplace
20 facilitator or referrer can show to the department's satisfaction
21 that:

22 (i) The taxable retail sale was made through the marketplace
23 facilitator's marketplace or directly resulting from a referral of
24 the purchaser by the referrer;

25 (ii) The taxable retail sale was made solely as the agent of a
26 marketplace seller, and the marketplace facilitator, or referrer, and
27 marketplace seller are not affiliated persons; and

28 (iii) The failure to collect sales tax was not due to an error in
29 sourcing the sale under RCW 82.32.730.

30 (b) Liability relief for a marketplace facilitator under (a) of
31 this subsection (3) for a calendar year is limited as follows:

32 (i) For calendar year 2018, the liability relief may not exceed
33 ten percent of the total tax due under this chapter and chapter 82.12
34 RCW on taxable retail sales by the marketplace facilitator as agent
35 of a marketplace seller and sourced to this state under RCW 82.32.730
36 during the same calendar year.

37 (ii) For calendar years 2019, 2020, 2021, 2022, and 2023, the
38 liability relief may not exceed five percent of the total tax due
39 under this chapter and chapter 82.12 RCW on taxable retail sales by
40 the marketplace facilitator as agent of a marketplace seller and

1 sourced to this state under RCW 82.32.730 during the same calendar
2 year.

3 (iii) Beginning in calendar year 2024, the liability relief may
4 not exceed three percent of the total tax due under this chapter and
5 chapter 82.12 RCW on taxable retail sales by the marketplace
6 facilitator as agent of a marketplace seller and sourced to this
7 state under RCW 82.32.730 during the same calendar year.

8 (c) Liability relief for a referrer under (a) of this subsection
9 (3) for a calendar year is limited as follows:

10 (i) For calendar year 2018, the liability relief may not exceed
11 ten percent of the total tax due under this chapter and chapter 82.12
12 RCW on taxable retail sales directly resulting from a referral of the
13 purchaser to the marketplace seller by the referrer and sourced to
14 this state under RCW 82.32.730 during the same calendar year.

15 (ii) For calendar years 2019, 2020, 2021, 2022, and 2023, the
16 liability relief may not exceed five percent of the total tax due
17 under this chapter and chapter 82.12 RCW on taxable retail sales
18 directly resulting from a referral of the purchaser to the
19 marketplace seller by the referrer and sourced to this state under
20 RCW 82.32.730 during the same calendar year.

21 (iii) Beginning in calendar year 2024, the liability relief may
22 not exceed three percent of the total tax due under this chapter and
23 chapter 82.12 RCW on taxable retail sales directly resulting from a
24 referral of the purchaser to the marketplace seller by the referrer
25 and sourced to this state under RCW 82.32.730 during the same
26 calendar year.

27 (d) Where the marketplace facilitator or referrer is relieved of
28 liability under this subsection (3), the marketplace seller is also
29 relieved of liability for the amount of uncollected tax due, subject
30 to the limitations in subsection (4) of this section.

31 (4) A marketplace seller is relieved of its obligation to collect
32 the taxes imposed under this chapter and chapter 82.12 RCW on all
33 taxable retail sales through a marketplace operated by a marketplace
34 facilitator or directly resulting from a referral of the purchaser to
35 the marketplace seller by the referrer if the marketplace seller has
36 obtained documentation from the marketplace facilitator or referrer
37 indicating that the marketplace facilitator or referrer is registered
38 with the department and will collect all applicable taxes due under
39 this chapter and chapter 82.12 RCW on all taxable retail sales made
40 on behalf of the marketplace seller through the marketplace operated

1 by the marketplace facilitator or taxable retail sales directly
2 resulting from a referral of the purchaser to the marketplace seller
3 by the referrer. The documentation required by this subsection (4)
4 must be provided in a form and manner prescribed by or acceptable to
5 the department. This subsection (4) does not relieve a marketplace
6 seller from liability for uncollected taxes due under this chapter or
7 chapter 82.12 RCW resulting from a marketplace facilitator's or
8 referrer's failure to collect the proper amount of tax due when the
9 error was due to incorrect information given to the marketplace
10 facilitator or referrer by the marketplace seller.

11 (5) A marketplace seller that is also a remote seller subject to
12 section 602(1) of this act is relieved of its obligation to collect
13 sales or use taxes imposed under this chapter and chapter 82.12 RCW
14 on all taxable retail sales through a marketplace operated by a
15 marketplace facilitator that provides the marketplace seller with
16 written confirmation that the marketplace facilitator has elected to
17 comply with the notice and reporting requirements of section 605 of
18 this act in lieu of collecting sales and use taxes.

19 (6) No class action may be brought against a marketplace
20 facilitator or referrer in any court of this state on behalf of
21 purchasers arising from or in any way related to an overpayment of
22 sales or use tax collected by the marketplace facilitator or
23 referrer, regardless of whether that claim is characterized as a tax
24 refund claim. Nothing in this subsection affects a purchaser's right
25 to seek a refund from the department as provided under chapter 82.32
26 RCW.

27 (7) Nothing in this section affects the obligation of any
28 purchaser to remit sales or use tax as to any applicable taxable
29 transaction in which the seller or the seller's agent does not
30 collect and remit sales tax.

31 (8) This section is subject to the provisions of section 613 of
32 this act.

33 (9) The definitions in section 604 of this act apply to this
34 section.

35 NEW SECTION. **Sec. 604.** The definitions in this section apply
36 throughout this chapter unless the context clearly requires
37 otherwise.

38 (1) "Affiliated person" means a person that, with respect to
39 another person:

1 (a) Has an ownership interest of more than five percent, whether
2 direct or indirect, in the other person; or

3 (b) Is related to the other person because a third person, or
4 group of third persons who are affiliated persons with respect to
5 each other, holds an ownership interest of more than five percent,
6 whether direct or indirect, in the related persons.

7 (2) "Consumer" has the same meaning as provided in chapters
8 82.04, 82.08, and 82.12 RCW.

9 (3) "Marketplace facilitator" means a person that contracts with
10 sellers to facilitate for consideration, regardless of whether
11 deducted as fees from the transaction, the sale of the seller's
12 products through a physical or electronic marketplace operated by the
13 person, and engages:

14 (a) Directly or indirectly, through one or more affiliated
15 persons in any of the following:

16 (i) Transmitting or otherwise communicating the offer or
17 acceptance between the buyer and seller;

18 (ii) Owning or operating the infrastructure, electronic or
19 physical, or technology that brings buyers and sellers together;

20 (iii) Providing a virtual currency that buyers are allowed or
21 required to use to purchase products from the seller; or

22 (iv) Software development or research and development activities
23 related to any of the activities described in (b) of this subsection
24 (3), if such activities are directly related to a physical or
25 electronic marketplace operated by the person or an affiliated
26 person; and

27 (b) In any of the following activities with respect to the
28 seller's products:

29 (i) Payment processing services;

30 (ii) Fulfillment or storage services;

31 (iii) Listing products for sale;

32 (iv) Setting prices;

33 (v) Branding sales as those of the marketplace facilitator;

34 (vi) Order taking;

35 (vii) Advertising or promotion; or

36 (viii) Providing customer service or accepting or assisting with
37 returns or exchanges.

38 (4) "Marketplace seller" means a seller that makes retail sales
39 through any physical or electronic marketplaces operated by a
40 marketplace facilitator or directly resulting from a referral by a

1 referrer, regardless of whether the seller is required to be
2 registered with the department as provided in RCW 82.32.030.

3 (5) "Platform" means an electronic or physical medium, including
4 a web site or catalog, operated by a referrer.

5 (6) "Product" has the same meaning as provided in RCW 82.32.023.

6 (7) "Purchaser" means any consumer who purchases or leases a
7 product sourced to this state under RCW 82.32.730.

8 (8) "Referral" means the transfer by a referrer of a potential
9 customer to a marketplace seller who advertises or lists products for
10 sale on the referrer's platform.

11 (9) "Referrer" means a person who contracts or otherwise agrees
12 with a seller to list or advertise for sale one or more items in any
13 medium, including a web site or catalog; receives a commission, fee,
14 or other consideration from the seller for the listing or
15 advertisement; transfers, via telephone, internet link, or other
16 means, a purchaser to a seller or an affiliated person to complete
17 the sale; and does not collect receipts from the purchasers for the
18 transaction.

19 (10) "Remote seller" means any seller, other than a marketplace
20 facilitator or referrer, who does not have a physical presence in
21 this state and makes retail sales to purchasers.

22 (11) "Retail sale" and "sale" have the same meaning as provided
23 in chapter 82.04 RCW.

24 (12) "Seller" has the same meaning as in RCW 82.08.010 and
25 includes marketplace facilitators, whether making sales in their own
26 right or on behalf of marketplace sellers, and referrers.

27 NEW SECTION. **Sec. 605.** (1) Except as otherwise provided in
28 subsection (5) of this section, a seller that does not collect the
29 tax imposed under chapter 82.08 or 82.12 RCW on a taxable retail sale
30 must comply with the applicable notice and reporting requirements of
31 this section. For taxable retail sales made through a marketplace
32 facilitator, or other agent, the marketplace facilitator, or other
33 agent must comply with the notice and reporting requirements of this
34 section, and the principal is not subject to the notice and reporting
35 requirements of this section with respect to those sales. If the
36 referrer makes an election to comply with the applicable notice and
37 reporting requirements of this section, marketplace sellers to whom a
38 referral is made by the referrer remain subject to the applicable
39 notice and reporting requirements under this section for their sales

1 unless the marketplace sellers collect the tax imposed under chapter
2 82.08 or 82.12 RCW on taxable retail sales sourced to this state
3 under RCW 82.32.730.

4 (2)(a) A seller, other than a referrer acting in its capacity as
5 a referrer, subject to the notice and reporting requirements of this
6 section must:

7 (i) Post a conspicuous notice on its marketplace, platform, web
8 site, catalog, or any other similar medium that informs Washington
9 purchasers that:

10 (A) Sales or use tax is due on certain purchases;

11 (B) Washington requires the purchaser to file a use tax return;
12 and

13 (C) The notice is provided under the requirements of this
14 section; and

15 (ii) Provide a notice to each consumer at the time of each retail
16 sale. The notice under this subsection (2)(a)(ii) must include the
17 following information:

18 (A) A statement that neither sales nor use tax is being collected
19 or remitted upon the sale;

20 (B) A statement that the consumer may be required to remit sales
21 or use tax directly to the department; and

22 (C) Instructions for obtaining additional information from the
23 department regarding whether and how to remit the sales or use tax to
24 the department.

25 (b) The notice under (a)(ii) of this subsection (2) must be
26 prominently displayed on all invoices and order forms including,
27 where applicable, electronic and catalog invoices and order forms,
28 and upon each sales receipt or similar document provided to the
29 purchaser, whether in paper or electronic form. No indication may be
30 made that sales or use tax is not imposed upon the transaction,
31 unless:

32 (i) Such indication is followed immediately with the notice
33 required by (a)(ii) of this subsection (2); or

34 (ii) The transaction with respect to which the indication is
35 given is exempt from sales and use tax pursuant to law.

36 (3) A referrer subject to the notice and reporting requirements
37 of this section must:

38 (a) Post a conspicuous notice on its platform that informs
39 Washington purchasers:

40 (i) That sales or use tax is due on certain purchases;

1 (ii) That the seller may or may not collect and remit retail
2 sales tax on a purchase;

3 (iii) That Washington requires the purchaser to file a use tax
4 return if retail sales tax is not assessed at the time of a taxable
5 sale by the seller;

6 (iv) That the notice is provided under the requirements of this
7 section;

8 (v) Of the instructions for obtaining additional information from
9 the department regarding whether and how to remit the sales or use
10 tax to the department; and

11 (vi) That if the seller to whom the purchaser is referred does
12 not collect retail sales tax on a subsequent purchase by the
13 purchaser, the seller may be required to provide information to the
14 purchaser and the department about the purchaser's potential sales or
15 use tax liability.

16 (b) The notice under (a) of this subsection (3) must be
17 prominently displayed on the platform and may include pop-up boxes or
18 notification by other means that appear when the referrer transfers a
19 purchaser to a marketplace seller or an affiliated person to complete
20 the sale.

21 (4)(a) A seller, other than a referrer acting in its capacity as
22 a referrer, subject to the notice and reporting requirements of
23 subsection (2) of this section must, no later than January 31st of
24 each year, provide a report to each consumer for whom the seller was
25 required to provide a notice under subsection (2)(a)(ii) of this
26 section.

27 (b) The report under this subsection (4) must include:

28 (i) A statement that the seller did not collect sales or use tax
29 on the consumer's transactions with the seller and that the consumer
30 may be required to remit such tax directly to the department;

31 (ii) A list, by date, generally indicating the type of product
32 purchased or leased during the immediately preceding calendar year by
33 the consumer from the seller, sourced to this state under RCW
34 82.32.730, and the price of each product;

35 (iii) Instructions for obtaining additional information from the
36 department regarding whether and how to remit the sales or use tax to
37 the department;

38 (iv) A statement that the seller is required to submit a report
39 to the department pursuant to subsection (6) of this section stating

1 the total dollar amount of the consumer's purchases from the seller;
2 and

3 (v) Any information as the department may reasonably require.

4 (c)(i) The report required under this subsection (4) must be sent
5 to the consumer's billing address or, if unknown, the consumer's
6 shipping address, by first-class mail, in an envelope marked
7 prominently with words indicating important tax information is
8 enclosed.

9 (ii) If no billing or shipping address is known, the report must
10 be sent electronically to the consumer's last known email address
11 with a subject heading indicating important tax information is
12 enclosed.

13 (5)(a) A referrer subject to the notice requirements under
14 subsection (3) of this section must, no later than January 31st of
15 each year, provide notice to each marketplace seller to whom the
16 referrer transferred a potential purchaser located in Washington
17 during the previous calendar year.

18 (b) The notice under this subsection (5) must include:

19 (i) A statement that Washington imposes a sales or use tax on
20 retail sales;

21 (ii) A statement that a seller, meeting the threshold in section
22 602(2) of this act, is required to either collect and remit retail
23 sales or use tax on all taxable retail sales sourced to this state
24 under RCW 82.32.730 or to comply with this section; and

25 (iii) Instructions for obtaining additional information from the
26 department.

27 (c) By January 31st of each year, a referrer required to provide
28 the notice under this subsection must provide the department with:

29 (i) A list of sellers who received the referrer's notice under
30 this subsection. The information must be provided electronically in a
31 form and manner required by the department.

32 (ii) An affidavit signed under penalty of perjury from an officer
33 of the referrer affirming that the referrer made reasonable efforts
34 to comply with the applicable sales and use tax notice and reporting
35 requirements of this section.

36 (6)(a) A seller, other than a referrer acting in its capacity as
37 a referrer, subject to the notice and reporting requirements of this
38 section must, no later than January 31st of each year, file a report
39 with the department.

1 (b) The report under this subsection (6) must include, with
2 respect to each consumer to whom the seller is required to provide a
3 report under subsection (4) of this section by January 31st of the
4 current calendar year:

5 (i) The consumer's name;

6 (ii) The billing address and, if different, the last known
7 mailing address;

8 (iii) The shipping address for each product sold or leased to
9 such consumer for delivery to a location in this state during the
10 immediately preceding calendar year; and

11 (iv) The total dollar amount of all such purchases by such
12 consumer.

13 (c) The report under this subsection (6) must also include an
14 affidavit signed under penalty of perjury from an officer of the
15 seller affirming that the seller made reasonable efforts to comply
16 with the applicable sales and use tax notice and reporting
17 requirements in this section.

18 (d) Except for the affidavit, the report under this subsection
19 (6) must be filed electronically in a form and manner required by the
20 department.

21 (7) A seller who is registered with the department to collect and
22 remit retail sales and use tax, and who makes a reasonable effort to
23 comply with the requirements of RCW 82.08.050 and 82.12.040, is not
24 required to provide notice or file reports under this section.

25 (8) Every seller subject to this chapter must keep and preserve,
26 for a period of five years, suitable records as may be necessary for
27 the department to verify the seller's compliance with this chapter.
28 All of the seller's books, records, and invoices must be open for
29 examination at any reasonable time by the department. The department
30 may require the attendance of any officer of the seller or any
31 employee of the seller having knowledge pertinent to the department's
32 investigation of the seller's compliance with this chapter, at a time
33 and place fixed in a subpoena issued under RCW 82.32.117, and may
34 take the person's testimony under oath.

35 (9) In exercising discretion in enforcing the provisions of this
36 chapter, the department may take into consideration available
37 resources, whether the anticipated benefits from any potential
38 enforcement activities are likely to exceed the department's expected
39 enforcement costs, and any other factors the department deems
40 appropriate.

1 NEW SECTION. **Sec. 606.** (1)(a) The department must assess a
2 penalty against any seller, other than a referrer acting in its
3 capacity as a referrer, that fails to provide notice to consumers
4 pursuant to section 605(2)(a) of this act, in addition to any other
5 applicable penalties, in the amount of twenty thousand dollars. The
6 department may assess the penalty under this subsection only once per
7 calendar year, regardless of the number of notices a seller fails to
8 provide pursuant to section 605(2)(a) of this act during the calendar
9 year. The department may apply this penalty at any time during a
10 calendar year and no more frequently than annually.

11 (b) The department must assess a penalty against any referrer
12 that fails to provide notice to consumers pursuant to section 605(3)
13 of this act, in addition to any other applicable penalties, in the
14 amount of twenty thousand dollars. The department may apply this
15 penalty at any time during a calendar year and no more frequently
16 than annually.

17 (2)(a) The department must assess a penalty against a seller who
18 fails to provide a report as required by section 605(4) of this act,
19 in addition to any other applicable penalties, in the amount of eight
20 and one-half percent of gross receipts from sales sourced to this
21 state under RCW 82.32.730 for the calendar year for which the report
22 was required to be made.

23 (b) The department must assess a penalty against a referrer who
24 fails to provide the notice and list required by section 605(5) of
25 this act, in addition to any other applicable penalties, in the
26 amount of eight and one-half percent of the gross income of the
27 business received from the referrer's referral services apportioned
28 to Washington under RCW 82.04.460, whether or not subject to tax
29 under chapter 82.04 RCW, for the calendar year for which the notice
30 and list was required to be made. The department may assess the
31 penalty under this subsection only once per calendar year, regardless
32 of the number of failures to comply with section 605(5) of this act
33 during the calendar year.

34 (3) The department must assess a penalty against any seller,
35 other than a referrer acting in its capacity as a referrer, who fails
36 to provide a report to the department as required by section 605(6)
37 of this act, in addition to any other applicable penalties, in the
38 amount of twenty-five dollars multiplied by the number of consumers
39 that should have been included on such report, but not less than
40 twenty thousand dollars for any calendar year.

1 (4) The penalties imposed under subsections (1) through (3) of
2 this section are cumulative.

3 (5) No penalty may be imposed by the department under subsections
4 (1) through (4) of this section more than four years after the close
5 of the calendar year in which the notice or report giving rise to the
6 penalty was required to have been provided. This subsection (5) does
7 not apply to penalties reassessed under subsection (9) of this
8 section.

9 (6) When assessing a penalty under this section, the department
10 may use any reasonable estimation technique where necessary or
11 appropriate to determine the amount of any penalty.

12 (7) Interest accrues on the amount of the total penalty that has
13 been assessed under this section until the total penalty amount is
14 paid in full. Interest imposed under this section must be computed
15 and assessed as provided in RCW 82.32.050 as if the penalty imposed
16 under this subsection was a tax liability.

17 (8) The department must notify a seller by mail, or
18 electronically as provided in RCW 82.32.135, of the amount of any
19 penalty and interest due under this section. Amounts due under this
20 section must be paid in full within thirty days from the date of the
21 notice, or within such further time as the department may provide in
22 its sole discretion.

23 (9)(a)(i) A seller is entitled to a conditional waiver of
24 penalties and interest imposed under this section if the seller
25 enters into a written agreement with the department electing to
26 collect retail sales or use tax or fully comply with all applicable
27 notice and reporting requirements of this chapter, beginning by a
28 date acceptable to the department. An election to collect retail
29 sales or use tax must be for a period of at least twelve consecutive
30 months and is subject to the provisions of section 602(1)(d) of this
31 act.

32 (ii) The department may grant a waiver of penalties and interest
33 under this subsection (9)(a) for penalties and interest assessed for
34 a seller's failure to comply with the notice and reporting
35 requirements for one or more violations.

36 (iii) The department may not grant more than one request by a
37 seller for a waiver of penalties and interest under this subsection
38 (9)(a).

39 (iv) The department must reassess penalties and interest
40 conditionally waived under this subsection (9)(a) if the department

1 finds that, after the date that the seller agreed to fully comply
2 with the applicable notice and reporting requirements of this
3 chapter, the seller failed to:

4 (A) Provide notice under section 605(2)(a)(ii) of this act to at
5 least ninety-five percent of the consumers entitled to such notice in
6 any given calendar year or portion of the initial calendar year in
7 which the agreement required under this subsection was in effect if
8 the agreement was in effect for less than the entire calendar year;

9 (B) Timely provide the reports required under section 605(4) of
10 this act to all consumers who received notice from the seller under
11 section 605(2)(a)(ii) of this act during any calendar year, unless
12 the department finds that any such failure was due to circumstances
13 beyond the seller's control;

14 (C) Timely provide the reports required under section 605(6) of
15 this act during any calendar year, unless the department finds that
16 any such failure was due to circumstances beyond the seller's
17 control; or

18 (D) With respect to referrers, timely provide the notice required
19 under section 605(3) of this act and the notice and list required
20 under section 605(5) of this act during any calendar year, unless the
21 department finds that any such failure was due to circumstances
22 beyond the referrer's control.

23 (v) The department must reassess penalties and interest
24 conditionally waived under this subsection (9)(a) if the department
25 finds that, after the date that the seller elected to collect retail
26 sales or use tax, the seller failed to register with the department
27 and make a reasonable effort to comply with the requirements of RCW
28 82.08.050 and 82.12.040.

29 (vi) The department may not reassess penalties and interest
30 conditionally waived under this subsection (9)(a) more than four
31 calendar years following the calendar year in which the department
32 granted the conditional waiver under this subsection (9)(a).

33 (vii) The provisions of subsection (8) of this section apply to
34 penalties and interest reassessed under this subsection (9)(a). The
35 department may add additional interest on penalties reassessed under
36 this subsection (9)(a) only if the total amount of penalties
37 reassessed under this subsection (9)(a) is not paid in full by the
38 date due. Additional interest authorized under this subsection
39 (9)(a)(vii) applies beginning on the day immediately following the

1 day that the reassessed penalties were due and accrues until the
2 total amount of reassessed penalties are paid in full.

3 (b) The department must waive penalties and interest imposed
4 under this section if the department determines that the failure of
5 the seller to fully comply with the notice or reporting requirements
6 was due to circumstances beyond the seller's control.

7 (c) A request for a waiver of penalties and interest under this
8 subsection must be received by the department in writing and before
9 the penalties and interest for which a waiver is requested are due
10 pursuant to subsection (8) of this section. The department must deny
11 any request for a waiver of penalties and interest that does not
12 fully comply with the provisions of this subsection (9)(c).

13 NEW SECTION. **Sec. 607.** Chapter 82.32 RCW applies to the
14 administration of this chapter.

15 NEW SECTION. **Sec. 608.** Nothing in this chapter relieves sellers
16 or consumers who are subject to chapter 82.08 or 82.12 RCW from any
17 responsibilities imposed under those chapters. Nor does anything in
18 this chapter prevent the department from administering and enforcing
19 the taxes imposed under chapter 82.08 or 82.12 RCW with respect to
20 any seller or consumer who is subject to such taxes.

21 NEW SECTION. **Sec. 609.** A new section is added to chapter 82.32
22 RCW to be codified between RCW 82.32.045 and 82.32.050 to read as
23 follows:

24 (1) Except as otherwise provided in this section, taxes imposed
25 under chapter 82.08 or 82.12 RCW and payable by a consumer directly
26 to the department are due, on returns prescribed by the department,
27 by the earlier of March 1st of the calendar year immediately
28 following the calendar year in which the sale or use occurred or
29 within thirty days of the date of a notice from the department that
30 tax may be due.

31 (2) This section does not apply to the reporting and payment of
32 taxes imposed under chapters 82.08 and 82.12 RCW:

33 (a) On the retail sale or use of motor vehicles, vessels, or
34 aircraft; or

35 (b) By consumers who are engaged in business, unless the
36 department has relieved the consumer of the requirement to file
37 returns pursuant to RCW 82.32.045(4).

1 the tax, fails to pay it to the department in the manner prescribed
2 by this chapter, whether such failure is the result of the seller's
3 own acts or the result of acts or conditions beyond the seller's
4 control, the seller is, nevertheless, personally liable to the state
5 for the amount of the tax.

6 (4) Sellers are not relieved from personal liability for the
7 amount of the tax unless they maintain proper records of exempt or
8 nontaxable transactions and provide them to the department when
9 requested.

10 (5) Sellers are not relieved from personal liability for the
11 amount of tax if they fraudulently fail to collect the tax or if they
12 solicit purchasers to participate in an unlawful claim of exemption.

13 (6) Sellers are not relieved from personal liability for the
14 amount of tax if they accept an exemption certificate from a
15 purchaser claiming an entity-based exemption if:

16 (a) The subject of the transaction sought to be covered by the
17 exemption certificate is actually received by the purchaser at a
18 location operated by the seller in Washington; and

19 (b) Washington provides an exemption certificate that clearly and
20 affirmatively indicates that the claimed exemption is not available
21 in Washington. Graying out exemption reason types on a uniform form
22 and posting it on the department's web site is a clear and
23 affirmative indication that the grayed out exemptions are not
24 available.

25 (7)(a) Sellers are relieved from personal liability for the
26 amount of tax if they obtain a fully completed exemption certificate
27 or capture the relevant data elements required under the streamlined
28 sales and use tax agreement within ninety days, or a longer period as
29 may be provided by rule by the department, subsequent to the date of
30 sale.

31 (b) If the seller has not obtained an exemption certificate or
32 all relevant data elements required under the streamlined sales and
33 use tax agreement within the period allowed subsequent to the date of
34 sale, the seller may, within one hundred twenty days, or a longer
35 period as may be provided by rule by the department, subsequent to a
36 request for substantiation by the department, either prove that the
37 transaction was not subject to tax by other means or obtain a fully
38 completed exemption certificate from the purchaser, taken in good
39 faith.

1 (c) Sellers are relieved from personal liability for the amount
2 of tax if they obtain a blanket exemption certificate for a purchaser
3 with which the seller has a recurring business relationship. The
4 department may not request from a seller renewal of blanket exemption
5 certificates or updates of exemption certificate information or data
6 elements if there is a recurring business relationship between the
7 buyer and seller. For purposes of this subsection (7)(c), a
8 "recurring business relationship" means at least one sale transaction
9 within a period of twelve consecutive months.

10 (d) Sellers are relieved from personal liability for the amount
11 of tax if they obtain a copy of a direct pay permit issued under RCW
12 82.32.087.

13 (8) The amount of tax, until paid by the buyer to the seller or
14 to the department, constitutes a debt from the buyer to the seller.
15 Any seller who fails or refuses to collect the tax as required with
16 intent to violate the provisions of this chapter or to gain some
17 advantage or benefit, either direct or indirect, and any buyer who
18 refuses to pay any tax due under this chapter is guilty of a
19 misdemeanor.

20 (9) Except as otherwise provided in this subsection, the tax
21 required by this chapter to be collected by the seller must be stated
22 separately from the selling price in any sales invoice or other
23 instrument of sale. On all retail sales through vending machines, the
24 tax need not be stated separately from the selling price or collected
25 separately from the buyer. Except as otherwise provided in this
26 subsection, for purposes of determining the tax due from the buyer to
27 the seller and from the seller to the department it must be
28 conclusively presumed that the selling price quoted in any price
29 list, sales document, contract or other agreement between the parties
30 does not include the tax imposed by this chapter. But if the seller
31 advertises the price as including the tax or that the seller is
32 paying the tax, the advertised price may not be considered the
33 selling price.

34 (10) Where a buyer has failed to pay to the seller the tax
35 imposed by this chapter and the seller has not paid the amount of the
36 tax to the department, the department may, in its discretion, proceed
37 directly against the buyer for collection of the tax. If the
38 department proceeds directly against the buyer for collection of the
39 tax as authorized in this subsection, the department may add a
40 penalty of ten percent of the unpaid tax to the amount of the tax due

1 for failure of the buyer to pay the tax to the seller, regardless of
2 when the tax may be collected by the department. In addition to the
3 penalty authorized in this subsection, all of the provisions of
4 chapter 82.32 RCW, including those relative to interest and
5 penalties, apply. For the sole purpose of applying the various
6 provisions of chapter 82.32 RCW, the twenty-fifth day of the month
7 following the tax period in which the purchase was made will be
8 considered as the due date of the tax.

9 ~~(11) ((Notwithstanding subsections (1) through (10) of this~~
10 ~~section, any person making sales is not obligated to collect the tax~~
11 ~~imposed by this chapter if:~~

12 ~~(a) The person's activities in this state, whether conducted~~
13 ~~directly or through another person, are limited to:~~

14 ~~(i) The storage, dissemination, or display of advertising;~~

15 ~~(ii) The taking of orders; or~~

16 ~~(iii) The processing of payments; and~~

17 ~~(b) The activities are conducted electronically via a web site on~~
18 ~~a server or other computer equipment located in Washington that is~~
19 ~~not owned or operated by the person making sales into this state nor~~
20 ~~owned or operated by an affiliated person. "Affiliated persons" has~~
21 ~~the same meaning as provided in RCW 82.04.424.~~

22 ~~(12) Subsection (11) of this section expires when: (a) The United~~
23 ~~States congress grants individual states the authority to impose~~
24 ~~sales and use tax collection duties on remote sellers; or (b) it is~~
25 ~~determined by a court of competent jurisdiction, in a judgment not~~
26 ~~subject to review, that a state can impose sales and use tax~~
27 ~~collection duties on remote sellers.~~

28 ~~(13) For purposes of this section:)) The definitions in this~~
29 ~~subsection apply throughout this section unless the context clearly~~
30 ~~requires otherwise.~~

31 (a) "Exemption certificate" means documentation furnished by a
32 buyer to a seller to claim an exemption from sales tax. An exemption
33 certificate includes a reseller permit or other documentation
34 authorized in RCW 82.04.470 furnished by a buyer to a seller to
35 substantiate a wholesale sale(~~(; and)~~).

36 (b) "Seller" includes a certified service provider, as defined in
37 RCW 82.32.020, acting as agent for the seller.

38 **Sec. 612.** RCW 82.12.040 and 2015 c 169 s 9 are each amended to
39 read as follows:

1 (1) Every person who (~~maintains in this state a place of~~
2 ~~business or a stock of goods, or engages in business activities~~
3 ~~within this state~~) is subject to a collection obligation under
4 chapter 82.08 RCW, except a person making a valid election to comply
5 with the notice and reporting provisions of section 605 of this act,
6 must obtain from the department a certificate of registration, and
7 must, at the time of making sales of tangible personal property,
8 digital goods, digital codes, digital automated services, extended
9 warranties, or sales of any service defined as a retail sale in RCW
10 82.04.050 (2) (a) or (g) or (6)(~~(b)~~) (c), or making transfers of
11 either possession or title, or both, of tangible personal property
12 for use in this state, collect from the purchasers or transferees the
13 tax imposed under this chapter. The tax to be collected under this
14 section must be in an amount equal to the purchase price multiplied
15 by the rate in effect for the retail sales tax under RCW 82.08.020.
16 (~~For the purposes of this chapter, the phrase "maintains in this~~
17 ~~state a place of business" includes the solicitation of sales and/or~~
18 ~~taking of orders by sales agents or traveling representatives. For~~
19 ~~the purposes of this chapter, "engages in business activity within~~
20 ~~this state" includes every activity which is sufficient under the~~
21 ~~Constitution of the United States for this state to require~~
22 ~~collection of tax under this chapter. The department must in rules~~
23 ~~specify activities which constitute engaging in business activity~~
24 ~~within this state, and must keep the rules current with future court~~
25 ~~interpretations of the Constitution of the United States.)~~)

26 (2) Every person who engages in this state in the business of
27 acting as an independent selling agent for persons who do not hold a
28 valid certificate of registration, and who receives compensation by
29 reason of sales of tangible personal property, digital goods, digital
30 codes, digital automated services, extended warranties, or sales of
31 any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g)
32 or (6)(~~(b)~~) (c), of his or her principals for use in this state,
33 must, at the time such sales are made, collect from the purchasers
34 the tax imposed on the purchase price under this chapter, and for
35 that purpose is deemed a retailer as defined in this chapter.

36 (3) The tax required to be collected by this chapter is deemed to
37 be held in trust by the retailer until paid to the department, and
38 any retailer who appropriates or converts the tax collected to the
39 retailer's own use or to any use other than the payment of the tax
40 provided herein to the extent that the money required to be collected

1 is not available for payment on the due date as prescribed is guilty
2 of a misdemeanor. In case any seller fails to collect the tax herein
3 imposed or having collected the tax, fails to pay the same to the
4 department in the manner prescribed, whether such failure is the
5 result of the seller's own acts or the result of acts or conditions
6 beyond the seller's control, the seller is nevertheless personally
7 liable to the state for the amount of such tax, unless the seller has
8 taken from the buyer a copy of a direct pay permit issued under RCW
9 82.32.087.

10 (4) Any retailer who refunds, remits, or rebates to a purchaser,
11 or transferee, either directly or indirectly, and by whatever means,
12 all or any part of the tax levied by this chapter is guilty of a
13 misdemeanor.

14 ~~(5) ((Notwithstanding subsections (1) through (4) of this~~
15 ~~section, any person making sales is not obligated to collect the tax~~
16 ~~imposed by this chapter if:~~

17 ~~(a) The person's activities in this state, whether conducted~~
18 ~~directly or through another person, are limited to:~~

19 ~~(i) The storage, dissemination, or display of advertising;~~

20 ~~(ii) The taking of orders; or~~

21 ~~(iii) The processing of payments; and~~

22 ~~(b) The activities are conducted electronically via a web site on~~
23 ~~a server or other computer equipment located in Washington that is~~
24 ~~not owned or operated by the person making sales into this state nor~~
25 ~~owned or operated by an affiliated person. "Affiliated persons" has~~
26 ~~the same meaning as provided in RCW 82.04.424.~~

27 ~~(6) Subsection (5) of this section expires when: (a) The United~~
28 ~~States congress grants individual states the authority to impose~~
29 ~~sales and use tax collection duties on remote sellers; or (b) it is~~
30 ~~determined by a court of competent jurisdiction, in a judgment not~~
31 ~~subject to review, that a state can impose sales and use tax~~
32 ~~collection duties on remote sellers.~~

33 ~~(7))~~ Notwithstanding subsections (1) through (4) of this
34 section, any person making sales is not obligated to collect the tax
35 imposed by this chapter if the person would have been obligated to
36 collect retail sales tax on the sale absent a specific exemption
37 provided in chapter 82.08 RCW, and there is no corresponding use tax
38 exemption in this chapter. Nothing in this subsection ~~((7))~~ (5) may
39 be construed as relieving purchasers from liability for reporting and
40 remitting the tax due under this chapter directly to the department.

1 ~~((8))~~ (6) Notwithstanding subsections (1) through (4) of this
2 section, any person making sales is not obligated to collect the tax
3 imposed by this chapter if the state is prohibited under the
4 Constitution or laws of the United States from requiring the person
5 to collect the tax imposed by this chapter.

6 ~~((9))~~ (7) Notwithstanding subsections (1) through (4) of this
7 section, any licensed dealer facilitating a firearm sale or transfer
8 between two unlicensed persons by conducting background checks under
9 chapter 9.41 RCW is not obligated to collect the tax imposed by this
10 chapter.

11 NEW SECTION. **Sec. 613.** A new section is added to chapter 82.32
12 RCW to read as follows:

13 (1) If the department determines that a change, taking effect
14 after the effective date of this section, in the streamlined sales
15 and use tax agreement or federal law creates a conflict with any
16 provision of section 602 or 603 of this act, such conflicting
17 provision or provisions of section 602 or 603 of this act, including
18 any related provisions that would not function as originally
19 intended, have no further force and effect as of the date the change
20 in the streamlined sales and use tax agreement or federal law becomes
21 effective.

22 (2) For purposes of this section:

23 (a) A change in federal law conflicts with section 602 or 603 of
24 this act if the change clearly allows states to impose greater sales
25 and use tax collection obligations on remote sellers, referrers, or
26 marketplace facilitators than provided for, or clearly prevents
27 states from imposing sales and use tax collection obligations on
28 remote sellers, referrers, or marketplace facilitators to the extent
29 provided for, under section 602 or 603 of this act.

30 (b) A change in the streamlined sales and use tax agreement
31 conflicts with section 602 or 603 of this act if one or more
32 provisions of section 602 or 603 of this act causes this state to be
33 found out of compliance with the streamlined sales and use tax
34 agreement by its governing board.

35 (3) If the department makes a determination under this section
36 that a change in federal law or the streamlined sales and use tax
37 agreement conflicts with one or more provisions of section 602 or 603
38 of this act, the department:

1 (a) May adopt rules in accordance with chapter 34.05 RCW that are
2 consistent with the streamlined sales and use tax agreement and that
3 impose sales and use tax collection obligations on remote sellers,
4 referrers, or marketplace facilitators to the fullest extent allowed
5 under state and federal law; and

6 (b) Must include information on its web site informing taxpayers
7 and the public (i) of the provision or provisions of section 602 or
8 603 of this act that will have no further force and effect, (ii) when
9 such change will become effective, and (iii) about how to participate
10 in any rule making conducted by the department in accordance with (a)
11 of this subsection (3).

12 (4) For purposes of this section, "remote seller," "referrer,"
13 and "marketplace facilitator" have the same meaning as provided in
14 section 604 of this act.

15 Part VII

16 **Expanding Individual Liability for an Entity's Unpaid Tax Obligations**

17 **Sec. 701.** RCW 82.32.145 and 2015 c 188 s 121 are each amended to
18 read as follows:

19 (1) Whenever the department has issued a warrant under RCW
20 82.32.210 for the collection of unpaid (~~trust-fund~~) recoverable
21 taxes from a limited liability business entity and that business
22 entity has been terminated, dissolved, or abandoned, or is insolvent,
23 the department may pursue collection of the entity's unpaid (~~trust~~
24 ~~fund~~) recoverable taxes, including penalties and interest on those
25 taxes, against any or all of the responsible individuals. For
26 purposes of this subsection, "insolvent" means the condition that
27 results when the sum of the entity's debts exceeds the fair market
28 value of its assets. The department may presume that an entity is
29 insolvent if the entity refuses to disclose to the department the
30 nature of its assets and liabilities.

31 (2) Personal liability under this section may be imposed only for
32 state and local (~~trust-fund~~) recoverable taxes.

33 (3)(a) For a responsible individual who is the current or a
34 former chief executive or chief financial officer, liability under
35 this section applies regardless of fault or whether the individual
36 was or should have been aware of the unpaid (~~trust-fund~~)
37 recoverable tax liability of the limited liability business entity.